

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION**

UNITED STATES OF AMERICA

VS.

4:06-CR-00256-01-BRW

LAQUENTIN NICHOLS

ORDER

Pending is Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582 (Doc. No. 46), based on the retroactive application of the United States Sentencing Commission's crack cocaine penalty guideline reduction (Amendment 750).

At the original sentencing, Defendant's base offense level was 28, with a criminal history category of VI. He received a 2-point increase for possession of a firearm and a 3-point reduction for acceptance of responsibility, which resulted in a total offense level of 27 and a guideline range of 130-162 months. Defendant received a sentence of 99 month sentence.¹

Defendant requested a sentence reduction in 2008 based on Amendment 706 of the U.S. Sentencing Guidelines. This request was denied because at the original sentencing, over the Government's objection, I accepted Defendant's "argument for a downward variance based on the forthcoming crack cocaine amendment."² In other words, I gave Defendant a non-guideline sentence in anticipation of the changing crack cocaine laws.

Under Amendment 750, Defendant's total offense level would be 25, which would make his guideline range 110-137 months. This range is more than the 99-month sentence he received. Section 1B1.10(b)(2)(A) of the Guidelines reads:

¹Doc. Nos. 31, 32.

²Doc. No. 38.

Except as provided in subdivision (B), the court shall not reduce the defendant's term of imprisonment under 18 U.S.C. § 3582(c)(2) and this policy statement to a term that is less than the minimum of the amended guideline range determined under subdivision (1) of this subsection.³

The exception mentioned in subdivision (B) is for substantial assistance, which is not applicable in this case. Based on § 1B1.10(b)(2)(A), since Defendant's sentence is less than the amended guideline range and he does not qualify for the substantial assistance exception, Defendant is not entitled to a reduction under Amendment 750.

Accordingly, Defendant's Motion to Modify Sentence Under 18 U.S.C. § 3582 (Doc. No. 46) is DENIED.

IT IS SO ORDERED this 14th day of December, 2011.


UNITED STATES DISTRICT JUDGE

³U.S. SENTENCING GUIDELINES MANUAL § 1B1.10 (2011).